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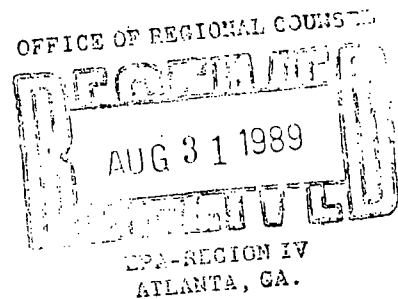
WRITERS DIRECT DIAL

(202) 457-5282

August 29, 1989

VIA TELECOPY

Carol F. Baschon, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365



Re: Collierville Site

Dear Carol:

Thank you for your August 21 letter transmitting the revised draft consent order. In our view, there are relatively few major issues remaining to be resolved. These issues are discussed below; suggested language for portions of the draft Order are enclosed as Attachment A.

Before going into these issues, I would like to address several minor points. First, Carrier is a Delaware corporation, not a New York corporation. (§ II.A., p.2) Second, the sentence beginning on line 15 of page 4 should commence "It includes . . ." instead of "It shall also include . . ." in order to conform with the rest of the paragraph. Finally, "or correspondence" should be deleted from § XIII.B.1. (page 13). We believe that submitting bound copies of letters is unnecessary.

The major issues are:

Sec. V §§ F-J1 -- The Order no longer needs to provide for a detailed list of deliverables other than the draft and final RI and the draft and final FS, because that is the function of the work plan and the whole point of incorporating it by reference. The detailed language of Section V §§ F-J1 becomes redundant, and may conflict with the desire to perform treatability studies as



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part of the FS. In our view, the formal provision of numerous interim deliverables -- as opposed to close on-going cooperation between the project coordinators -- is likely to slow down completion of the RI/FS and initiation of any necessary remedial work.

Sec. VII ¶ C. Site Access. Carrier recently suggested some language which you may have received, but to which you have not yet had an opportunity to respond.

Sec. IX. Dispute Resolution. We are transmitting a proposed alternative dispute resolution clause, modelled on one used by Region VII.

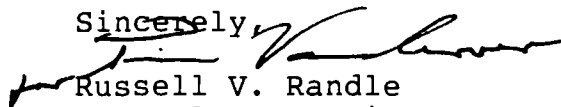
Sec. XIV. Force Majeure. We suggest a change in the language of the waiver sentence.

Sec. XVI. Cost Reimbursement. Carrier has submitted language on this issue, and you have asked to discuss it. It would help us in addressing EPA's concerns on this point if you could provide us information on whatever response and oversight costs EPA claims to have incurred concerning this site through June 30, 1989. Our client cannot agree with language which may be read to relinquish the right to review and challenge mistaken or inappropriate cost items.

Sec. XVIII. Stipulated Penalties. We suggest some changes in this language to recognize deletion of some of the milestones from the schedule in ¶ V, and to make other changes. The deleted milestones will already have been completed at the time this order is entered.

We believe that a meeting with you and Felicia Barnett would be useful in attempting to resolve these issues. I understand that Jess Walrath has talked to Felicia Barnett about a technical meeting meeting in the second week in September. We should try to coordinate these two meetings and I will call you in the next few days in order to do so.

Sincerely,



Russell V. Randle
Counsel to Carrier Corporation

RVR/tlc

ATTACHMENT A

Proposed Revision to Sec. V. (Replaces former ¶¶ A-C).

A. The Respondent shall diligently implement the RI/FS work plan approved by EPA, together with any modifications to the work plan made pursuant to Section X of this Order. ("Work Plan"). That Work Plan is Attachment One to this Consent Order and is incorporated into the Order. The RI/FS work will be conducted according to the standards, specifications, and schedule provided in the Work Plan and approved modifications to it.

(Revised ¶ D)

B. For the duration of this Order, by the tenth of each month, Respondent shall make a written progress report to EPA. Each monthly report shall:

- (1) describe steps taken in the preceding month to perform the work described in the Work Plan;
- (2) transmit final sampling results and other final data received by Respondent during the preceding month; and
- (3) identify steps to be taken under the Work Plan during the current month.

(Revised ¶ E)

C. Respondent shall promptly notify EPA of the beginning and completion of field activities provided in the Work Plan.

(former ¶ H)

D. Remedial Investigation. Within the period set out in the Work Plan, Respondent shall submit a draft Remedial Investigation (RI) report which includes a summary of results of the field activities to characterize the site and nature and extent of contamination, the fate and transport of contaminants, and results of the baseline risk assessment. If EPA disapproves of the RI report in whole or in part, Respondent shall amend and submit to EPA a revised RI report within forty-five (45) days of receipt of EPA's written notification of disapproval.

(former ¶ J.2)

E. Feasibility Study Report. Within the time period set forth in the Work Plan, Respondent shall submit a draft FS report. [Respondent and its contractors shall also conduct a presentation to EPA at which they shall present and discuss findings of the remedial investigation, remedial action objectives, alternatives evaluated in the FS, and the comparative analysis.] The Report, as amended by EPA, and the administrative record shall provide the basis for the proposed plan under CERCLA

§§ 113(k) and 117(a) by EPA and shall document the development and analysis of remedial alternatives. If EPA disapproves of the draft FS report in whole or in part, Respondent shall amend and submit to EPA a revised FS report within forty-five (45) days of receiving EPA's written notification of disapproval.

¶¶ K-S pp 8-9 become ¶¶ F-N

Sec. IX. Dispute Resolution

1. If Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Order, Respondent shall notify EPA in writing via certified mail of its objections and the bases therefor within ten (10) calendar days of its receipt of EPA's disapproval, decision, or directive. EPA and Respondent shall then have an additional thirty (30) calendar days from EPA's receipt of Respondent's objections to attempt in good faith to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each Party, and incorporated into this Order. Any extension of time shall be accomplished through a written amendment to this Order pursuant to Section , concerning modifications. Such an extension shall not alter the schedule for the performance or completion of any other requirements unless these are also specifically altered by amendment of this Order or amendment of the underlying plan(s).

2. If the parties are unable to reach agreement within this 30-day period, EPA shall provide a written statement of its decision to Respondent. (Such decision by EPA shall be made generally in accordance with the provisions of this Order, in particular in accordance with the reservation of rights provisions of this Order, ~~and shall be incorporated in this Order.~~)

Sec. XIV. Force Majeure

Modify the fifth sentence of the section to read as follows:

Failure of the Respondent to comply adequately with the notice requirements of this paragraph shall constitute a waiver of the right to invoke this Section for the particular circumstances for which notice was inadequate.

Sec. XVIII. Stipulated Penalties.

Except for delays from events which constitute a force majeure, the Respondent will be subject to the imposition of stipulated penalties for failure to submit the draft or final RI Report, or draft or final FS Report by the deadlines set forth in the approved RI/FS work plan, as such deadlines may subsequently

and any draft and final treatability study report

modified pursuant to this Order. These stipulated penalties are
1000 ~~\$500~~ per day for the first 10 business days, ~~\$1,000~~ per day for
the next 20 business days, and ~~\$1,500~~ per day for each business
day beyond 30 business days. For the purpose of this provision,
the submission date of documents is the date they are mailed or
placed in the hands of an express service. Payment for any
stipulated penalties accrued pursuant to this Consent Order will
be sent to:

United States Environmental Protection Agency
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

Attn: Collection Officer for Superfund

within thirty (30) days of receipt by Respondent of EPA's written
accounting of the penalties. Payment, in the form of a check
will be sent by certified mail. A copy of the Respondent's
transmittal letter referencing the Site will be sent
simultaneously to the EPA Project Coordinator. EPA reserves the
right to waive such penalties.